

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13260 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HANSABEN AJITRAI DESAI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR

Appearance:

MR MI HAVA for Petitioner

MR ST MEHTA, AGP for Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/10/98

ORAL JUDGEMENT

This petition has been filed for quashing the orders dated 23-3-77 passed by the competent officer and Dy. Collector, Surat Annexure-A, order dated 1-9-77 of the Addl. Special Secretary (Appeal), Revenue Division, Gujarat State and the notification dated 19-5-1977.

2. The petitioner has filed statement regarding her property before the competent officer and Addl.

Secretary, Surat and that authority after holding inquiry sent a draft statement u/s 8 of the Urban Land (Ceiling & Regulation) Act, 1976 on 18-1-1977. The petitioner filed her objections before the competent officer u/s 8 (3) of the Urban Land (Ceiling & Regulation) Act, 1976 on 11-2-1977. The competent authority by its order No.ULC 1/49 dated 23-3-1977 declared that the petitioner was holding 10964 sq. mtr. land. The petitioner filed an appeal before the Appellate Authority against the order of the competent authority. The Appellate Authority treated the land in dispute of exclusive owner as one unit and dismissed the appeal by the order dated 1-9-1977. Learned counsel for the petitioner has filed the registered partition deed of the family property on 24-12-1971 and according to said partition deed two sons and one daughter were to get Rs. 70888/- ., Rs. 49566/and Rs.19288/- along with their separate shares in the land proportionately. As such, there should be four units of the property and share to each member has already been settled by the partition deed. As such, the owners and holders of the property are four persons and the authorities ought to have treated four units of the property in dispute. The Appellate Authority rejected the submissions of the petitioner on the ground that the names of two sons and daughter were not found in the Government record and the shares of two sons and one daughter in the property cannot be said to be relevant in this regard. Learned counsel for the petitioner submitted that both the authorities have committed error on the face of the record and they are not sustainable in the eye of law.

3. Heard learned counsel for the parties and perused the relevant papers. It is well settled law that Hindu Joint Family property can be held by all the persons as well as one person on behalf of other persons. But the shares of the family members will be determined according to the pedigree of the family and their shares should have been determined on any date and on the date of enforcement of the Act and the shares of the property have already been determined by the partition deed and the parts of shares have already been given to two sons and one daughter and the remaining part of the property was to be given to the petitioner and other shareholders. The petitioner can hold the property on behalf of other members of the family i.e. the other members of the family and coparcener of that property. Thus, the petitioner cannot be said to be an exclusive owner or holding the property exclusively on her own behalf as it is the property in which the other two sons and one daughter have already their shares and she was holding

her share and on behalf of other two sons and one daughter. Both the authorities have committed error on the face of the record and in holding that the petitioner was holding the property exclusively as one unit.

4. As such, the orders passed by the authorities below are illegal on the face of the record and are not sustainable in the eye of law and are liable to be set aside and quashed. Accordingly, this petition is allowed and the order dated 23-3-1977 of the competent officer and Addl. Collector, Surat and the order dated 1-9-1977 of the Addl. Special Secretary (Appeal), Revenue Department, Government of Gujarat and the notification dated 19-5-77 are hereby quashed and set aside. The shares of the petitioner and other coparcener are to be separated and hence the matter is remanded back to the competent authority and Addl. Collector, Surat for deciding the matter in light of the observations made in this judgment above and the competent officer and Addl. Collector, Surat is directed to decide the matter in accordance with law as early as possible preferably within two months from the date of presentation of a certified copy of this order.

5. Accordingly, rule is made absolute, with no order as to costs.

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